earlier it can be seen that what is really the subject of the application for certiorari here is the order of the Industrial Court referring back to the Ministry the reference in question "for remedial steps to be taken" and the further suggestion that another reference be made under section 20 in which event the claimants may have to give up membership of the union.

In my opinion from whatever angle you look at it the order of the Industrial Court is certainly an order made without jurisdiction. I say this for the following reasons:– First, the reference of the Minister itself has not been challenged. The Federal Court was held that once the Minister decides to make a reference and his order is not set aside the Industrial Court is seized with jurisdiction to hear the dispute and it is implicit in the Act that the Industrial Court must exercise that jurisdiction. See *Assunta Hospital* v. *Dr. A. Dutt*[2]. The Industrial Court cannot pretend to usurp the function of the Minister by further suggesting another reference under section 20 of the Act.

Secondly, by virtue of section 29(g) of the Act (which deals with the general power of the Industrial Court to do all such things as are necessary or expedient) and section 30(1) (which gives the Industrial Court power to make an award relating to all or any of the issues before it) the question of *locus standi* of a party to a dispute must certainly be an issue within jurisdiction for how else would the Industrial Court exercise its discretion whether to order any party be joined, substituted or struck out according to section 29(a) of the Act. A cursory glance at the ruling on the question of *locus standi* reproduced from the award earlier would reveal that no such discretion was exercised at all by the Industrial Court. It may well be that the Industrial Court properly declined to make an order to add or substitute a party to the dispute because it could not in the first place determine who was really the proper party to represent the claimants. Or the Industrial Court might have felt that it had no power to determine the issue. In either case it was not open to the Industrial Court to remit the reference back to the Ministry. The Industrial Court could for example adjourn the hearing of the main dispute until the question as to who was the proper party to represent the claimants be sorted out first either by itself or elsewhere. In short the Industrial Court had no power to order that the reference be remitted back to the Ministry or to suggest another reference under section 20 of the Act.

For the above reasons I held that the applicant union was entitled to an order of certiorari as prayed.

Application allowed.

Solicitors: *D.P. Xavier & Co.; Ng Yook Woon, Andrew T.C. Saw & Zahardin.*

SYARIKAT BERPAKAT v. LIM KAI KOK

[O.C.J. (Hashim Yeop A. Sani J.) April, 19, 1982]

[Kuala Lumpur – Originating Motion No. A4 of 1982]

Practice and Procedure – Stay of Execution – Discretion of court – Stay to be granted only if there are special circumstances.

In this case judgment had been entered in the Sessions Court against the applicant for the sum of $12,788/– at the suit of the respondent. The applicant applied for stay of execution to the Sessions Court and the Sessions Court allowed the stay on condition that the applicant deposited the judgment sum with the solicitors for the respondent. Subsequently the applicant applied instead to pay the judgment debt by monthly instalments on the grounds that he was in financial difficulties. This was refused. The applicant thereupon applied to the High Court.

Held: as a rule the court will only grant stay if there are special circumstances. In this case no special circumstances had been shown to justify a stay.

Cases referred to:

(1) *Serangoon Garden Estate Ltd.*, v. *Ang Keng* [1953] M.L.J. 116.

(2) *Monk* v. *Bartram* [1891] 1 Q.B. 346.

CIVIL SUIT.

A. Krishnan for the applicant.

A. D. Rajah for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J: This was an application for stay of execution or alternatively to allow the applicant to pay the judgment sum with interests and costs by monthly instalments of $500/= to be held in trust by the solicitors for the respondent.

From what can be gathered from the affidavit of the applicant and the reply by the respondent, judgment in a sum of $12,788/= together with interest and costs was entered in the Sessions Court against the defendant (now applicant). The

application for stay of execution was made to the Sessions Court by the surviving partner of the defendant firm. On January 15, 1982 the Sessions Court allowed stay on condition that the defendant deposit the judgment sum with the solicitors of the plaintiff firm within 30 days of the order. Soon afterwards an application was made in the Sessions Court by the same partner of the defendant firm to pay instead by monthly instalments of $500/= on the grounds that he was in financial difficulties. But this application was refused. Hence the present application.

The law on the granting of an order for stay of execution has been examined a number of times in the courts of this country. It is trite law that the court has an absolute and unfettered discretion to grant or refuse an application for stay. As a rule the court will however only grant stay if there are special circumstances and which circumstances must be deposed in the affidavit supporting the application. The governing principle in all cases where the court is asked to exercise its discretion is clearly expressed by Brown J. in *Serangoon Garden Estate Ltd.* v. *Ang Keng*(1) and the principle is this: the court will not deprive a successful party of the fruits of his litigation until an appeal is determined, unless the unsuccessful party can show special circumstances to justify it. The principle enunciated here goes back to many years ago as can be seen in *Monk* v. *Bartram.*(2) In that case stay had been refused by the trial judge and in the Court of Appeal it was held that where a stay of execution has been refused by the trial court an application made in a Court of Appeal for a stay pending appeal must be supported by special circumstances and allegations that there has been misdirection or that the verdict or judgment was against the weight of evidence, or that there was no evidence to support the verdict or judgment are not special circumstances. Lord Esher, M.R. in the Court of Appeal when refusing the application for stay said:

"We have made inquiries, and find that the practice in the Divisional Court has been similar to that as to appeals in this court in cases of trials before a judge without a jury. It has never been the practice in either case to stay execution after the judge at the trial has refused to grant it, unless special circumstances are shown to exist."

From the affidavit of the applicant here it seems clear that the sole ground relied on as special circumstances is to be found in paragraph 5 of the affidavit which reads as follows:

"I believe, it is imperative that a stay be granted as otherwise it will cause a permanent deprivation of money if the Plaintiff firm succeeds in the Appeal as there are merits in the Appeal in that there are points of law and facts for arguments."

Based on past precedents and authorities this ground cannot be regarded as special circumstances to justify an order for stay. In my opinion the application here was misconceived and I accordingly dismissed the Motion with costs.

Motion dismissed.

Solicitors: *Krishnan & Co.; Lovelace and Hastings.*

PROFESSOR DR. A. KAHAR BADOR & ORS. v. N. KRISHNAN & ORS.

[O.C.J. (Hashim Yeop A. Sani J.) May 10, 1982]

[Kuala Lumpur – Civil Suit No. A9 of 1982]

Practice and Procedure – Injunction – Interlocutory injunction – Application to set aside – Principles applicable.

In this case the applicants had obtained an *ex parte* injunction to restrain the defendants from acting in the capacity of elected members of the Committee of Management of a co-operative society and from taking control of the offices of the Society. The applicant had been elected to the Committee of Management of the society at its annual general meeting but thereafter a vote of no confidence against the Committee of Management had been passed and the defendants were elected from the floor to be temporary caretaker Committee of Management pending the outcome of an enquiry to be held by the Registrar of Co-operative Societies. The defendants applied to set aside the interlocutory injunction on the ground that there was allegedly suppression or misrepresentation of facts by the plaintiffs.

Held: (1) an interlocutory injunction will not be dissolved solely on the allegation of misrepresentation or suppresion of material facts unless the misrepresentation or suppression was of such a character as to mislead the court or where if the true picture was presented the court would probably not have granted the injunction;

(2) in this case the omissions by the first plaintiff to mention certain matters in his affidavit were not fatal to his application for interlocutory injunction, as the omissions did not amount to a suppression of material facts or omission intended to mislead the court nor was the court in fact misled.

Case referred to:

(1) *The Great Western Railway Co.* v. *The Birmingham & Oxford Junction Railway Co. & Ors.* 2 P.H. 597; 41 E.R. 1074.